

September 17, 2004

By Messenger

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

SEP 17 2004

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Public Record



RE: STB Finance Docket No. 34551, *Standard Terminal Railroad of New Jersey, Inc. -- Acquisition Exemption -- A Line of Railroad Owned by Joseph C. Horner*

Dear Secretary Williams:

On behalf of Standard Terminal Railroad of New Jersey, Inc. ("STRR"), this letter responds to the September 16, 2004 letter submitted by counsel for Bridgewater Resources, Inc. ("BRI") in the above-referenced docket. The purpose of BRI's letter is unclear, since BRI does not object to STRR's Notice of Exemption and does not ask the Board to revoke the exemption. Nor does the letter appear to ask the Board to do anything inconsistent with STRR's Notice of Exemption. Nevertheless, BRI misrepresents certain facts that STRR is compelled to correct for the record.

As STRR itself noted in its Notice of Exemption, BRI points out that ownership of the rail property in question currently is the subject of litigation. BRI, however, proceeds to assert that, in 2003, the Bankruptcy Court held that STRR had no operating rights in the property at issue, and that this is the current law of the case pending appeal by STRR. Inexplicably, BRI fails to mention that, in a decision issued on June 18, 2004, the District Court vacated and remanded the 2003 Bankruptcy Court decision. A copy of that decision is attached hereto as Exhibit 1. Thus, there is no court decision that declares the ownership and operating rights between STRR and BRI.

BRI also disingenuously suggests that STRR simply is attempting to extract a ransom from BRI or to block BRI from conducting its existing rail business. However, STRR recently has made settlement overtures to BRI that would allow both parties to conduct rail operations over the line, but BRI has rejected any settlement in which it is not the sole owner and operator of the line. STRR remains willing to discuss a settlement involving joint operation and use of the line.

Absent any settlement, STRR's Notice of Exemption clearly states that it will not consummate the transaction unless and until the Bankruptcy Court rules in its favor. STRR simply has asked the Board to grant it the same rights it granted in STB Finance Docket No. 34267, *Morristown & Erie Ry., Inc. -- Operation Exemption -- Somerset Terminal R.R. Corp.*, decision served Nov. 27, 2002, concerning this same line or railroad. It appears as if that also is BRI's request of the

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Board. If so, STRR has no objection, since that would be consistent with STRR's Notice of Exemption.

Sincerely,



Jeffrey O. Moreno

Enclosure

cc: (with enclosure)

Robert M. Jenkins III, *Counsel for Bridgewater Resources, Inc.*

John V. Edwards, *Counsel for Norfolk Southern Railway Company*

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE:	:	
	:	
BRIDGEWATER RESOURCES, INC.,	:	Case No. 00-60057 (WHG)
	:	
Debtor.	:	
	:	
SOMERSET TERMINAL RAILROAD, INC.,	:	
	:	
Plaintiff,	:	Civil No. 03-5431 (AET)
	:	
v.	:	<u>MEMORANDUM &amp; ORDER</u>
	:	
JOSEPH C. HORNER and STANDARD	:	
TERMINAL RAILROAD, INC.,	:	
	:	
Appellants.	:	
	:	
BRIDGEWATER RESOURCES, INC.,	:	
	:	
Intervenor Plaintiff/Appellee,	:	
	:	
v.	:	
	:	
SOMERSET TERMINAL RAILROAD, INC.,	:	
JOSEPH C. HORNER and STANDARD	:	
TERMINAL RAILROAD, INC.,	:	
	:	
Appellants	:	

THOMPSON, U.S.D.J.

This matter is before the Court on appeal by Standard Terminal Railroad, Inc.  
("Appellant" or "Standard Terminal"), from an Order entered in the United States Bankruptcy

Court on October 20, 2003, granting summary judgment to Bridgewater Resources, Inc. (“Appellee” or “BRI”), the debtor and intervenor-plaintiff below. Appellate jurisdiction rests with this Court pursuant to 28 U.S.C. § 158(a). The Court has reviewed the submissions of the parties and heard oral argument on May 18, 2004. For the reasons stated below, the Order of the Bankruptcy Court is vacated and remanded.

On appeal, this Court “may set aside the bankruptcy court’s factual findings only if the findings are clearly erroneous.” Chemetron Corp. v. Jones, 72 F.3d 341, 345 (3d Cir. 1995). When reviewing a decision which falls within the bankruptcy court’s discretionary authority, the district court may only determine whether the lower court abused its discretion. See e.g., In re Vertientes, Ltd., 845 F.2d 57, 59 (3d Cir. 1988). A bankruptcy court’s legal conclusions are subject to plenary review. Chemetron, 72 F.3d at 345.

The dispute in this case centers around the ownership of two tracts of land and a rail bridge that connects them (collectively the “Railroad Strip Property”). The owner of the Railroad Strip Property, Joseph Horner (“Horner”), executed a lease to Appellee/Debtor BRI in 1999. At the time of the transfer, Horner was the president and sole shareholder of BRI. The leasehold covered the two tracts of land in the Railroad Strip Property, but did not specifically mention the rail bridge. After BRI filed a petition for Chapter 11 bankruptcy in October 2002, Horner entered into an agreement with Somerset Terminal Railroad Corporation (“Somerset”) whereby Horner conveyed a quitclaim deed to the bridge and an easement over the Railroad Strip Property. In July 2002, Horner and Somerset terminated their agreement and the quitclaim and easement were transferred to Appellant Standard Terminal.

In granting summary judgment, the Bankruptcy Court voided Horner’s transfers to

Somerset and Standard Terminal, holding that BRI had an easement by necessity over the rail bridge,<sup>1</sup> that such easement was part of the bankruptcy estate pursuant to 11 U.S.C. § 541(a), and that Horner's transfers to Somerset and Standard Terminal violated the automatic stay under 11 U.S.C. § 362(a) and should be voided.

However, this Court must vacate and remand the Bankruptcy Court decision for three reasons. First, it appears from the record that the issue of whether BRI and Horner were de facto the same entity, thus allowing the corporate veil to be pierced, was not resolved by the Bankruptcy Court. Absent a piercing of the corporate veil, Horner held a property interest in the Railroad Strip Property that BRI did not, and could transfer this interest provided that this transfer did not violate 11 U.S.C. § 362(a). For this reason, voiding Horner's transfers to Somerset and Standard Terminal in their entirety was unwarranted, as Horner, at the least, held a reversionary interest in the Railroad Strip Property that could be conveyed without violating 11 U.S.C. § 362(a). For the Bankruptcy Court to void the deeds, it needed to either pierce the corporate veil or make a finding regarding the propriety of what Horner did when he transferred the property to Somerset and Standard Terminal.

Second, the Bankruptcy Court did not articulate the elements required for finding an easement or quasi-easement by necessity or the facts which would specifically satisfy those elements. Because this "lack of sufficient articulation for the decision renders appellate review

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<sup>1</sup>Despite the contentions of both parties, it appears that the Bankruptcy Court did not reach the issue of whether the bridge was included in Horner's lease to BRI as a matter of law. Instead, the Bankruptcy Court relied solely on the equitable doctrine of necessity in reaching its decision. (Tr. at 40-41, 69.) Thus, this Court will only address the parties' arguments regarding the doctrine of necessity. If the Bankruptcy Court found that BRI possessed a property interest based on an additional legal or equitable theory, this should be clarified on remand.

unduly speculative” this Court is “persuaded to remand by our desire not to conduct a narrower or more expansive review than is required by the precise contours of the [lower court’s] order.” Forbes v. Township of Lower Merion, 313 F.3d 144, 150 (3d Cir. 2002). On remand, the Bankruptcy Court should specifically articulate the contours of the legal and/or equitable property rights held by BRI, and identify how the facts in this case satisfy the requisite elements of such legal and/or equitable rights.

Finally, the Bankruptcy Court made no findings regarding whether BRI’s alleged property interest was affected by the transfer from Horner to Somerset and Standard Terminal, and thus was in violation of 11 U.S.C. § 362(a). Even if BRI possessed an easement that was part of the bankruptcy estate pursuant to 11 U.S.C. § 541(a), it is not clear that Horner’s transfer to Somerset or Standard Terminal would, per se, violate the automatic stay. This abstruseness was caused, in part, by the lack of a clear delineation of what exactly BRI’s rights in the property were, and how those rights were adversely affected by the transactions between Horner and Somerset and Horner and Standard Terminal. The quitclaim deed executed by Horner would be conveyed subject to any legal or equitable interests held by BRI. Thus, it appears from the record that it is disputed as to whether Horner’s transfers were incompatible with those interests. On remand, the Bankruptcy Court should analyze whether the undisputed facts show that the transfers from Horner to Somerset and Standard Terminal reduced or limited BRI’s property interests in the Railroad Strip Property.

For the foregoing reasons,

IT IS on this 18th day of June, 2004,

ORDERED that the Order entered in the United States Bankruptcy Court for the District

of New Jersey by Judge William H. Gindin on October 10, 2003 be and hereby is vacated; and it is further

ORDERED that this matter be and hereby is remanded to the Bankruptcy Court for further action consistent with this memorandum and order.

s/Anne E. Thompson

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ANNE E. THOMPSON, U.S.D.J.